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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/686,449	10/15/2003	Susan Carol	1197.1101101	6863

28075 7590 03/05/2007  
CROMPTON, SEAGER & TUFTE, LLC  
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MINNEAPOLIS, MN 55403-2420

EXAMINER
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PICKETT, JOHN G

ART UNIT	PAPER NUMBER
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3728

SHORTENED STATUTORY PERIOD OF RESPONSE	MAIL DATE	DELIVERY MODE
3 MONTHS	03/05/2007	PAPER

**Please find below and/or attached an Office communication concerning this application or proceeding.**

If NO period for reply is specified above, the maximum statutory period will apply and will expire 6 MONTHS from the mailing date of this communication.

**Office Action Summary**

Application No.

10/686,449

Applicant(s)

CAROL ET AL.

Examiner

Gregory Pickett

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --  
**Period for Reply**

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

**Status**

- 1) ☒ Responsive to communication(s) filed on 15 December 2006.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

**Disposition of Claims**

- 4) ☒ Claim(s) 1-6, 9-24 and 28-38 is/are pending in the application.
- 4a) Of the above claim(s) 13-24 and 28-38 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-6 and 9-12 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☒ Claim(s) 13-24 and 28-38 are subject to restriction and/or election requirement.

**Application Papers**

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☒ The drawing(s) filed on 15 December 2006 is/are: a) ☒ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

**Priority under 35 U.S.C. § 119**

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

**Attachment(s)**

- |   |   |
|---|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892)  | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date: _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)                        | 5) <input type="checkbox"/> Notice of Informal Patent Application                       |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)<br>Paper No(s)/Mail Date: _____ | 6) <input type="checkbox"/> Other: _____  |

### **DETAILED ACTION**

1. This Office Action acknowledges the applicant's amendment filed 15 December 2006. Claims 1-6, 9-24, and 28-38 are pending in the application. Claims 7, 8, and 25-27 have been canceled.
2. Claims 13-24 and 28-38 are withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected invention, there being no allowable generic or linking claim. Election was made **without** traverse in the reply filed on 27 April 2006.
3. The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Drawings***

4. The replacement drawings were received on 15 December 2006. These drawings are acceptable.

### ***Specification***

5. In light of the applicant's amendment, the objection to the specification is hereby withdrawn.

***Claim Rejections - 35 USC § 103***

6. Claims 1-6 and 9-12 are rejected under 35 U.S.C. 103(a) as being unpatentable over Cox et al (US 4,898,477; hereinafter Cox) in view of Kuge (US 2002/0141666 A1) and Bane (US 5,366,087).

Claim 1: Cox discloses an apparatus **10** comprising a front panel **12** and a back panel **14** with edges **16/17** connected to form a cavity for retaining paint (Col. 4, lines 45-54). Cox anticipates the panels being opaque (Col. 7, lines 5-11) and merely lacks the transparent portion and the removable and resealable adhesive label with text.

Kuge teaches transparent portions **12** on bag portions (see Figures 12 and 14) for observation of the bag contents while maintaining sufficient area for indicia (see for example paragraphs [0007] and [0004]). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the apparatus of Cox with transparent portions as taught by Kuge in order to enable observation of the bag contents while maintaining sufficient area for indicia.

As to the label, Bane teaches the provision of a removable and resealable adhesive text label **10/18/19** with text **22** indicating identifying characteristics, for the purpose of detection of when a package has been opened yet allowing ready resealing of the package (see Col. 1, lines 23-27). It would have been obvious to one of ordinary skill in the art at the time the invention was made to provide the apparatus of Cox-Kuge with a label as taught by Bane in order to detect when the package has been opened yet allow ready resealing of the package.

Claims 2 and 3: Cox discloses a flexible pouch **10**.

Claims 4 and 5: Kuge teaches a transparent portion on the front part (see Figures 12 and 14) in conjunction with oblong opaque portions **2** (Kuge uses a nylon-LDPE laminate, which is the same material used by the applicant, see Kuge paragraph [0042]).

Claim 6: Cox discloses line **38** delineating a recommended opening.

Claims 9 and 10: Bane discloses an adhesive **15** for use in reattachment.

Claim 11: Cox-Kuge-Bane, as applied to claim 1 above, discloses the claimed invention except for the specific amount of paint. It would have been an obvious matter of design choice to provide the paint of Cox-Kuge-Bane in the claimed volume, since such a modification would have involved a mere change in the size of a component. A change in size is generally recognized as being within the level of ordinary skill in the art. *In re Rose*, 105 USPQ 237 (CCPA 1955).

Claim 12: Both Cox and Kuge disclose oblong lateral cross-sections.

### ***Response to Arguments***

7. Applicant's arguments filed 15 December 2006 have been fully considered but they are not persuasive. Bane discloses a two-part label with portion **18** destructible and portion **19** as removable and reattachable (see for example, Col. 4, lines 32-34 and lines 45-50). The fact that Bane discloses additional structure not claimed by the applicant is irrelevant.

8. In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988) and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, the appropriate motivation may be found in Bane (see Col. 1, lines 23-27) and Kuge (see for example paragraphs [0007] and [0004]). The motivation for modifying a primary reference need not come from the primary reference itself, but may come from a secondary reference. *In re Laskowski*, 10 USPQ2d 1397 (Fed. Cir. 1989).

### **Conclusion**

Applicant's amendment necessitated the new ground(s) of rejection presented in this Office action. Accordingly, **THIS ACTION IS MADE FINAL**. See MPEP § 706.07(a). Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any

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extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Gregory Pickett whose telephone number is 571-272-4560. The examiner can normally be reached on Mon-Fri, 11:30 AM - 8:00 PM.

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Mickey Yu can be reached on 571-272-4562. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.

  
Greg Pickett  
Examiner  
26 February 2007

  
LUAN K. BUI  
PRIMARY EXAMINER